

## REMARKS

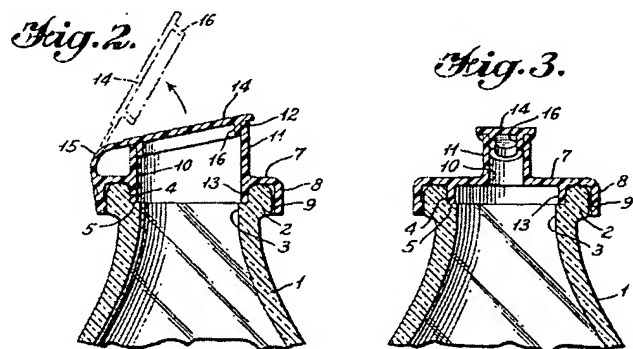
Claims 1-5 are pending. The claims all stand rejected as follows:

- a. Claim 1 stands rejected:
  - i. under 35 U.S.C. §102(b) as anticipated by Nowak U.S. Patent No. 2,851,203;
  - ii. under the judicially created double patenting rejection based on claim 1 of U.S. Patent No. 6,688,501.
- b. Claims 2-5 stand rejected under 35 U.S.C. §103 as unpatentable over Nowak in view of Hartman, Sr. U.S. Patent No. Des. 138,098.

With respect to the double patenting rejection, a Terminal Disclaimer relating to claim 1 is submitted herewith.

Applicant respectfully traverses the rejection of claims 1-5 over the prior art. It is respectfully submitted that the prior art references relied upon in the Office Action neither anticipate nor make obvious the invention of claims 1-5.

Specifically, Nowak discloses a milk bottle cap having an elongated cover 14 secured by a flexible strap 15 for pivoting or swinging between open and closes positions. While there is no precisely defined axis



Nowak

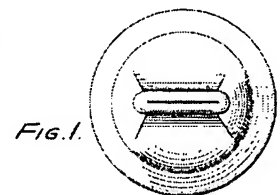
about which the cover pivots, it is nonetheless clear that the pivoting occurs about an axis which is essentially parallel to the short end walls of the spout 11 and perpendicular to the

longer side walls of the spout 11 (*i.e.*, the Nowak pivot axis lies perpendicular to the plane of Fig. 2 and parallel to the plane of Fig. 3).

By contrast, claim 1 herein recites that the "closure lid [is] secured to the closure body for selective pivoting about an axis . . . substantially parallel to said long back spout wall and said long front spout wall." Such an orientation, different from Nowak, is advantageous in that it allows a user to point the spout downward with the long orientation parallel to the surface on which it is desired to dispense some spread (*e.g.*, jelly on a piece of bread), tipping the container so that the opened closure lid is spaced above the surface. As a result, the longitudinal dimension of the spout may be fully utilized to dispense a wide layer of spread without the closure lid interfering. With the lid of Nowak, it would be impossible for the user to tip the container so as to ensure that the lid be held clear of the surface on which spread is dispensed without causing the longitudinal dimension of the spout to be also tipped into a non-parallel (and therefore effectively narrower) orientation relative to the surface. That is, tipping of the container to hold the lid clear with the claimed invention occurs about an axis parallel to the longitudinal direction of the spout whereas such tipping with Nowak occurs about an axis perpendicular to the spout longitudinal direction.

The combination of Nowak and Hartman, Sr. is also lacking in teaching the invention of claims 2-5.

For example, Hartman, Sr. is said to be a dispensing cap and, given that its opening is closed (see Fig. 1), it is apparent that if the cap is to actually dispense anything, it will have to distort



Hartman, Sr.

for the tip to open so as to provide a gap for dispensing. As such, during dispensing the inner surface of the cap must change shape during dispensing. Therefore, to contend that Hartman, Sr. teaches a shape which would be obvious for use in the Nowak bottle cap is essentially illogical. There is no suggestion in logic to use whatever shape Hartman, Sr. shows (which shape which *would not exist during actual dispensing*) and use that as a dispensing surface in Nowak.

Moreover, Hartman, Sr. essentially shows no interior surface in any event, with Fig. 4 the only one showing anything, and in that case a mere sliver of the surface above the threaded skirt, which sliver gives no indication of the interior shape.

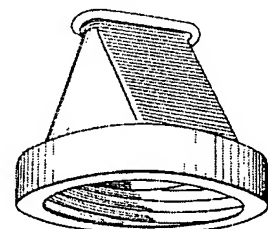


FIG. 4.  
Hartman, Sr.

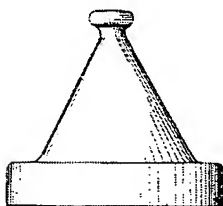


FIG. 2.  
Hartman, Sr.

Further, even assuming that the interior surface of

Hartman, Sr. matches the outer surface (and such an assumption is not necessarily reasonable<sup>1</sup>), it is respectfully submitted that Hartman, Sr. surface is substantially straight and not continuously curved as contended in the Office Action. Moreover, it is submitted that there is no support for the contention in the Office Action that

"[t]he geometric function is parabolic if considering one side and hyperbolic when both are taken together as seen in Figure 2."

Independent claim 2 also recites, *inter alia*, front and back *interior* surfaces which are "continuously curved according to a geometric function wherein the (1) lower

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<sup>1</sup>It is demonstrably not true that the walls of the Hartman, Sr. container have a uniform thickness. The skirt is smooth on the outside, but threaded on the inside. The upper lip is unquestionably thicker than the walls therebeneath.

end of each front interior surface and each back interior surface is substantially parallel to said container opening plane, and (2) the upper end of each front interior surface and each back interior surface adjacent said orifice is directed toward said orifice". Various embodiments of such structure are shown, for example, in Figs. 1-16 of the application. Even assuming that the interior surface of Hartman, Sr. matches the outside surface, the only surface which could remotely be said to meet such a limitation is the minimal rounded transition between the spout and the deck. Claim 2 has been amended to clearly distinguish from such an interpretation, reciting that the "continuously curved front and back interior surfaces defin[e] a substantial portion of the interior surface of said spout".<sup>2</sup> Certainly the mere rounded corner in Hartman, Sr. will not provide the advantageous dispensing qualities of the disclosed and claimed curved surface.

Dependent claims 3 and 4 recite, respectively, that the geometric function is a parabola (claim 3) or hyperbolic (claim 4). There is nothing in Hartman, Sr. to support the assertion in the Office Action that the interior surface may be shaped according to such geometric functions.

Dependent claim 5 further recites that the upper ends of the front and back interior surfaces adjacent the orifice are tangential to imaginary planes passing through the orifice. Since Hartman, Sr. discloses a closed orifice as noted above, it cannot be said to teach such a structure. Moreover, the minimal curved portion of the Hartman, Sr. surface does not meet this limitation in any event.

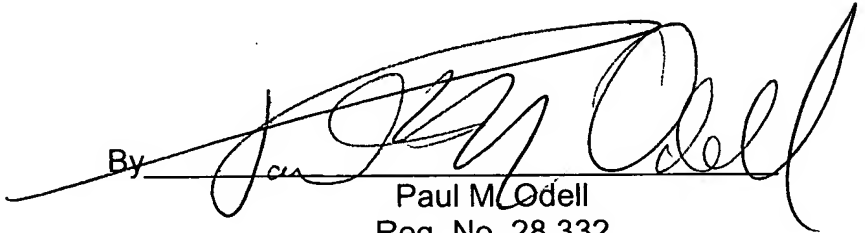
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<sup>2</sup>Claim 2 has also been amended to specify that the front and back interior surfaces are of the spout rather than the body. This changes the language merely to be consistent with the specification (see, e.g., page 13, lines 1-7 of the specification).

In view of the above, all of claims 1-5 as pending are submitted to be allowable. Early notification to that effect is respectfully requested.

Respectfully submitted,

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